IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8878 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHANTILAL ODHAVJI PITRODA

Versus

CHAIRMAN,ANJAR AREA DEVELOPMENT AUTHORITY

Appearance:

1. Special Civil Application No. 8878 of 2003

MR NALIN K THAKKER for Petitioner No. 1

MR NIKHILESH J SHAH for Respondent No. 1

MR SN SHELAT, ADVOCATE GENERAL with Ms MAITHILI MEHTA, AGP, for Respondents Nos. 2 & 3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 29/07/2004

ORAL JUDGEMENT

RULE. Service of rule is waived by learned advocate Shri N.J. Shah for respondent No. 1 and by learned AGP Ms. Maithili Mehta for respondents Nos. 2 and 3. At the request of the learned advocates, and looking to the facts of the case, the petition is finally heard today.

2. The petitioner is president of Anjar Lohar Gnati Trust, who has approached this Court with a grievance that in the matter of implementation of Anjar Town Planning Scheme No. 1, injustice has been caused to Shri Anjar Lohar Gnati Trust (hereinafter referred to as 'the Trust').

3. Learned advocate Shri Nalin Thakker appearing for the petitioner has submitted that the trust was the owner of 12 different plots bearing City Survey Nos. 1691 to 1702. The said plots in all admeasured 875.15 sq meters. The said Survey nos had been numbered as original plot no. 23 in pursuance of the scheme referred to hereinabove and ultimately, in lieu of the said original plot no. 23, the trust has been allotted Final Plot No. 23.

4. The grievance, which the petitioner has ventilated in the petition is that the trust is having two temples in its land bearing Survey No. 1702. The said land, according to the scheme, will now form part of a 6 M wide road, and as a result thereof one of the temples, will have to be demolished. Another temple will become part of F.P. No. 19 and 21 and, thus, both the temples will have to be demolished. According to him, looking to the provisions of Section 40(3)(i) of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as 'the Act'), the respondent authorities ought to have taken care in the process of reconstitution of the said plot so as to see that the said temples are protected. According to him, both the temples of Lord Shiva are being used for offering prayers to Lord Shiva and, therefore, the said temples ought to have been protected, or the road ought not to have been proposed on the land, where the said temples are situated.

5. It has been thereafter submitted by the learned advocate that formerly when the draft scheme had been published by the respondent authorities, the trust was to be allotted F.P. No. 23, which was on the southern side of a road going from east to west, but for the reasons best known to the authorities, even after the draft scheme had been sanctioned by the State of Gujarat under

the provisions of sec. 48(2) of the Act, the respondent authorities had made a change in the scheme and F.P. No. 23 was shifted to the northern side of the road referred to hereinabove. It has been submitted that the said change had been effected only with an intention to do undue favour to Shri Anjar Panjrapole. It has been submitted that the plot, which has been allotted to the trust, is not even or levelled. The said land is absolutely uneven and there are pits therein. According to the petitioner, the said land cannot be used for putting up construction and the level of the land is so low that it would be difficult for the users of the said plot to have access to the road, which is at a higher level.

6. It has been also submitted that the respondent authorities have also constructed the road, which is not in accordance with the preliminary scheme, which has been sanctioned under the provisions of sec.65 of the Act. It is the case of the petitioner that even after sanction of the draft scheme under sec. 48(2) of the Act, the alignment of the road, between F.P. No. 6 and 23 as shown on page 52 (Annexure 2 to the affidavit in reply filed on behalf of respondent No. 1) has been changed. It has been also submitted that, similarly, alignment of a road going from north to south, which is between F.P. No. 23 on one side and 19 on the other, has also been changed. It has been submitted by him that once the preliminary scheme has been sanctioned under the provisions of sec. 65 of the Act, it is not open to the authorities to change the alignment of the road.

7. Thereafter, the learned advocate has submitted that Anjar had been adversely affected on account of the earthquake, which had taken place on 26th January, 2001. The town planning scheme has been made mainly for the purpose of rehabilitation of the residents of Anjar. Instead of making an effort to rehabilitate the residents of Anjar, the respondent authorities have started making substantial changes in the city so as to put the residents of Anjar to more difficulties. It has been, therefore, submitted that respondent No. 1 has not made the scheme as per the object with which the scheme was to be made or the purpose with which respondent No. 1 authority has been constituted.

8. Thereafter, the learned advocate has submitted that the respondent authorities are not exercising their powers in accordance with law. It has been submitted that as per the settled legal position, as observed by the Hon'ble Supreme Court in the case of State of Bombay

(now Maharashtra) Vs. Shivabalak Gaurishanker & Ors, AIR 1965 SC 661 and in the case of Hazrat Syed Shah Mastarshid Ali Al Quadari v. Commissioner of Wakfs. West Bengal and others, AIR 1961 SC 1095, the power has to be exercised properly. According to him the power is always coupled with duty and in the instant case the respondents did not perform their duties under the Act and, therefore, they have misused their power.

9. It has been also submitted by the learned advocate that false statements have been made in the affidavits filed by the respondent authorities. It has been also submitted that an effort has been made by the respondent authorities to deceive the trust and to misguide this court. It has been submitted by him that in fact no plan was ever shown to the petitioner in pursuance of a so-called request made by the petitioner for making changes in the final plot. According to the learned advocate, in fact, at no point of time, the petiitoner had made a request to give the final plot to the trust on the northern side of the road. It has been also submitted by him that though no plan was shown to the petitioner, the petitioner was constrained to state that he had seen the reconstituted final plot. The said statement was recorded on 11.11.2002. It has been lastly submitted that no reply has been given to the rejoinder filed by the petitioner and, therefore, all the statements made in the rejoinder should be treated to have been admitted by the respondents and, therefore, the petition should be allowed and Final Plot No. 6A, which is on the southern side of the road referred to hereinabove, should be allotted to the trust.

10. In pursuance of notice issued by this court, learned advocate Shri N.J. Shah has appeared for respondent No. 1 and leaned Advocate General Shri S.N. Shelat, along with learned AGP Ms. Maithili Mehta, has appeared for respondents Nos. 2 and 3. Affidavits have been filed by the respondent authorities for opposing admission of the petition.

11. It has been submitted that in the course of making a town planning scheme at times it becomes difficult to protect properties of all persons. Very often, even temples may have to be demolished. In the instant case, the land, on which one of the temples constructed by the trust, is to become part of the road. Wheras another temple is to become part of a Final Plot, which is to be allotted to another person. It has been submitted that there is no provision in the Act which sasys that a temple can never be demolished. Looking to

the provisions of sec. 40(3)(i) of the Act, it has been submitted that the said section nowhere constrains the respondent authorities to keep the temples in tact even if they are constructed on land which is to form part of a road. It has been submitted by them that in spite of all possible efforts, the temples could not not be saved.

12. Thereafter, it has been submitted that Final Plot No. 23 was shifted from southern side of the road to the northern side only at the request of the petitioner. The circumstances in which the said plot was shifted have been narrated as under :

12.1 Formerly, as shown in Annexure-II to the affidavit-in-reply filed on behalf of respondent No. 1, F.P. No. 23, which was to be allotted to the trust, was on the southern side of the road. The draft scheme, as shown in Annexure II to the said affidavit, had been sanctioned by the State of Gujarat under the provisions of sec. 48(2) of the Act on 17.7.2002. When details with regard to the said scheme were being explained to the petitioner on 18.8.2002, a representation was made by him to the effect that the petitioner wanted its F.P. Nos. 307 and 23 side by side. It is pertinent to note that the trust was also having two other plots of land bearing survey Nos. 2329 and 2330 at Kothari Sheri. The said survey Nos. were given original plot No. 307 and subsequently F.P. No. 307 was allotted to the trust near Kothari Sheri in lieu of the said original plot. Kothari Sheri is at a distant place from the place where F.P. No.23 is situated. In the circumstances, a request was made by the petitioner that F.P. Nos. 23 and 307 be allotted at the same place possibly because the petitioner can have more space if both the plots are together. The said request was found to be quite reasonable by the authorities. A similar request had also been made on behalf of Shri Anjar Panjrapole, owner of F.P. No. 6, that it was having F.P. No. 24 and they wanted to have their final plot, being F.P. No. 6 abutting from F.P. No. 24. Looking to the fact that it was not possible to give F.P. No. 307 to the trust on the southern side of the road, and as Shri Anjar Panjrapole wanted to have its both F.P. Nos. 6 and 24 on one side, the respondent authorities thought it proper to reconstitute F.P. No. 6, 23 and 307 so as to please the petitioner as well as Shri Anjar Panjrapole. After due deliberation and careful consideration, respondent No. 2 thought it proper to reconstitute Final Plots Nos. 23 and 307 on the northern side of the road and F.P. No. 6 on the southern side of the road. It was also found that F.P. No. 6 was having such a size that it was not

possible to allot the same on the southern side of the road and, therefore, Plot No. 6 was sub-divided into two parts, namely, 6A and 6B. As it was possible to allot 6A on the southern side of the road in such a manner that it abuts F.P. No.24 belonging to Shri Anjar Panjrapole, reconstituted F.P. No. 6A was given on the southern side, whereas F.P. No. 6B was given on the northern side of the road. By doing so, respondent No. 2 had accepted the request of the petitioner to the effect that the petitioner gets F.P. No. 307 and 23 together and that Shri Anjar Panjrapole gets its Final Plots No. 6A and 24 together so that Shri Anjar Panjrapole can have one piece of a big land on the southern side of the road.

13. It has been further submitted on behalf of respondents Nos. 2 and 3 that after the aforestated reconstitution was made, the petitioner was asked to remain present in the office of respondent No. 2 on 11.11.2002. On that day, the petitioner was shown the reconstituted Final Plots Nos. 6A, 6B, 23 and 307. The petitioner, though happy with the allotment of F.P. Nos. 23 and 307 together, was aggrieved because he wanted to see that the temple of Lord Shiva is protected. He had, therefore, informed respondent No. 2 that he had seen the reconstituted final plots, which were made in pursuance of his representation, and he was agreeable to the said reconstituted final plots. He had given a writing to that effect under his signature. He had, however, made a request to see that the temples constructed by the trust are not demolished and to give the final plots at the place, where the original plots had been situated. However, looking to the location of the original plots, it was not possible to accept the further request made by the petitioner.

14. Thus, it has been submitted that the changes had been effected even after sanction of the draft scheme in pursuance of a request made by the petitioner. It has been submitted that there was no intention to do any undue favour to Shri Anjar Panjrapole. From the fact stated above, it is clear that an effort was to please the petitioner as well as the Panjrapole.

15. It has been also submitted on behalf of the respondent authorities that if the petitioner alleges any mala fide against Shri Anjar Panjrapole, the petitioner ought to have joined it as a respondent, but the Shri Anjar Panjrapole has not been joined as a respondent in this petition and, therefore, the allegations of mala fide should be ignored by this court.

16. With regard to modification in the alignment of roads, it has been submitted on behalf of the respondents that the alignment of the roads has not been changed at all. It has been submitted that so far as the alignment of roads is concerned, in the Draft scheme, which has been sanctioned under the provisions of sec. 48(2) and the preliminary scheme sanctioned under sec. 65 of the Act, is the same. According to the respondents, the roads are to be constructed only as per the preliminary scheme sanctioned by the government and, therefore, all averments with regard to making changes or modification in the road alignment have been denied.

17. So far as the object of the scheme is concerned, it has been submitted that though the town planning scheme has been made for rehabilitation of the affected residents of Anjar as a result of the earthquake which took place on 26th January, 2001, it has also been made for a better and systematic planning of Anjar town.

18. It has been fairly submitted on behalf of the respondents that the submission that the power is always coupled with duty cannot be disputed. It has been submitted that the power given to the respondent authorities under the Act has been exercised in accordance with law. The respondent authorities have performed their duties judiciously and they have made all possible efforts to see that the spirit with which the Act has been enacted is properly kept up.

19. It has been lastly submitted by the respondent authorities that no incorrect or false statement has been made in any of the affidavits. With regard to giving inspection of the reconstituted final plots to the petitioner, it has been stated that in fact the petitioner was shown the preliminary scheme with reconstituted final plots. It has been reiterated on behalf of the respondents that the petitioner knows Gujarati and upon reading the contents, which had been printed on the form, he had made a statement, which was recorded, and only upon perusal thereof the petitioner had put his signature. It has been, therefore, submitted that all allegations levelled against the respondent authorities with regard to making false statements, etc in the affidavits filed by them are baseless.

20. I have heard the learned advocates at length and have also gone through the judgments cited by learned advocate Shri Nalin Thakker and have also gone through the record.

21. Upon hearing the concerned advocates, it is clear that the respondent authorities have acted in accordance with law and there is no substance in the petition. It is deplorable that the petitioner did not mention certain facts, which have been stated in the affidavit-in-reply filed on behalf of respondent No. 2.

22. So far as the averment with regard to demolition of temples constructed by the trust is concerned, it is clear that one of the temples is constructed on land, which is to form part of the road whereas another temple is on the land which is to become part of a Final Plot which is to be allotted to another person. In the process of planning, especially in Anjar, where it has been decided to widen the roads, many of the properties of the residents would have to be disturbed or demolished. It is a known fact that in the city of Anjar no town planning scheme had been made in the past and buildings were constructed in a haphazard manner. Due to the said fact, the size and shape of most of the plots on which buildings have been constructed by the residents of Anjar are not regular. As a part of the scheme, the authorities were to see that the plots which are reconstituted, are of regular and reasonable size so that proper buildings can be constructed thereon. In the process of making the size and shape of finally reconstituted plots regular and while widening the roads, lands belonging to several plot holders had to be reduced. Many buildings had to be demolished as roads were required to be widened. In the instant case one temple was constructed on the land which is to be used for the purpose of constructing a new road, whereas another temple is on land, which is to form part of a final plot, which is to be given to another person. Such eventualities do arise in the process of town planning. In the circumstances, it cannot be said that the authorities have acted in violation of the provisions of sec. 40(3)(i) of the Act.

23. If, even after due care and caution, it is not possible to protect such religious places, it cannot be said that the authorities have acted in violation of the provisions of sec. 40(3)(i) of the Act. It is also pertinent to note here that the respondents as well as the petitioner have produced some photographs of the said temples. Upon perusal of the photographs, which are not on record, it is evident that the temples were destroyed to a great extent in the earthquake. Only one temple has survived the shock of the earthquake and that too, it has been substantially damaged. In the circumstances, it cannot be said that the authorities have acted against

the spirit of the provisions of sec. 40(3)(i) of the Act and more particularly when the said temples were not of great religious or historical importance.

24. With regard to making changes in the location of F.P. No. 23, it appears that the said changes have been effected only in pursuance of a request made by the petitioner. It is unfortunate that the petitioner did not state the fact that a request had been made by the petitioner to respondent No. 2 to make a change in such a way that the trust would get its F.P. Nos.23 and 307 together at the same place. Possibly, the intention of the petitioner was to see that if both the plots are allotted at the same place, the combined land of both the plots can be effectively used for a better purpose. One can very well understand that an owner having two different plots of land at different places would surely like to have both his plots together so as to have optimum use of the land, and more particularly when the owner is a trust, which has to use its land for benefit of the society or for a particular section of the society. In the instant case, the trust, as submitted by learned advocate Shri Thakker, has been created for the purpose of maintenance of temples and for upliftment of persons belonging to lohar (black-smith) community. In the draft scheme, which had been sanctioned by the government under sec. 48(2) of the Act on 17.7.2002, the petitioner was to get F.P. No. 23 on the southern side of the road in question but in pursuance of a request made by the petitioner as well as by Shri Anjar Panjrapole, the entire matter was reconsidered by respondent No. 2. As submitted on behalf of respondent No. 2, it was not possible to allot F.P. No. 307 and 23 on the southern side of the road. In the circumstances, a way was found out to allot both the plots together on the northern side of the road. By doing so, respondent No. 2 had tried to help the petiitoner by allotting its two plots in the vicinity and that too abutting each other, whereas Shri Anjar Panjrapole was also helped by allotting F.P No. 6 A on the southern side of the road. It is pertinent to note that on the southern side of F.P. No. 6A, there is a big plot of land belonging to Shri Anjar Panjrapole. By giving both the plots together, Shri Anjar Panjrapole was to be benefitted. Similarly, by getting two plots, namely, reconstituted F.P. Nos. 23 and 307 together, the petitioner was to be benefitted. Thus, in the interest of both the institutions and in pursuance of a request made on behalf of both the parties, respondent No. 2 had reconstituted Final Plots nos. 6A, 6B, 23 and 307. If such a reconstitution of final plots was done in

pursuance of a request made on behalf of the petitioner, the petitioner cannot be permitted to state at this stage that the respondent authorities have acted in a mala fide or malicious manner so as to oblige Shri Anjar Panjrapole.

25. Upon perusal of the annexures annexed to the additional affidavit filed on behalf of respondent No. 2, it is very clear that the map giving details about reconstituted F.P. Nos. 23 and 307 were shown to the petitioner and he was agreeable to allotment of the reconstituted final plots. Of course, at one point of time, the petitioner had raised an objection with regard to the place because he wanted the entire final plot at the place, where the original plot was situated, but the said request had not been acceded to as it was not possible. Another objection was with regard to payment of contribution. With regard to the amount of contribution, it is always open to the petitioner to ventilate his grievance before an appropriate authority and, therefore, at this stage this court need not take cognizance of the same.

26. Upon perusal of the annexures, it is very clear that the petitioner had perused the preliminary scheme incorporating reconstituted Final Plots Nos. 23 and 307. If the petitioner had acknowledged the fact that he was agreeable to have such reconstituted final plots, it is not open to the petitioner to make any grievance before this court that the plots were reconstituted so as to do undue favour to somebody else.

27. It is also pertinent to note that the petitioner has levelled allegations against Shri Anjar Panjrapole. It is deplorable that the said panjrapole has not been joined as a respondent and allegations have been levelled against it. Looking to the said fact, this Court would not like to look into the allegations levelled by the petitioner against the Panjrapole.

28. With regard to the allegation about making changes in the alignment of the roads, even after sanction of the preliminary scheme under sec. 65 of the Act, it has been submitted on behalf of the respondents that the alignment of the roads has not been changed at all. Upon perusal of the maps, which have been annexed as Annexure II to the affidavit-in-reply filed on behalf of respondent No. 1, it is clear that the alignment of the roads has not been changed even while sanctioning the preliminary scheme. It has been stated by learned advocate Shri N.J. Shah appearing for respondent No. 1,

in pursuance of instructions received from the concerned officer, that the alignment has not been changed at all. There is no reason to disbelieve the statement made at the Bar in pursuance of the instructions received from a responsible officer. I, therefore, do not find any substance in the allegation that alignment of the roads has been changed after sanction of the preliminary scheme.

29. The petitioner has made a submission that the power is always coupled with duty cannot be disputed. Even the respondents have not disputed the fact that they are bound to perform duties imposed upon them while making the scheme. The law laid down by the Hon'ble Supreme Court is also very clear in this regard. In the instant case, there is no reason to believe that the respondent authorities have not performed their duties. It appears that due care has been taken by the respondent authorities while making the scheme. The petitioner has been aggrieved because the temples constructed by the trust are to be demolished as a result of the scheme. Simply because the temples have to be demolished, it cannot be said that the respondent authorities have not performed their duties in accordance with law.

30. Upon perusal of both the affidavits filed on behalf of respondent No. 2, it appears that no incorrect or false statement has been made in the said affidavits. The allegations levelled against the concerned authorities are not correct. As a matter of fact, the petitioner ought to have stated before this court that a request had been made on behalf of the petitioner on 18.9.2002 that the trust wanted its two plots at the same place. Unfortunately, the said fact has not been stated in the petition at all. As a matter of fact, there is suppression of fact on the part of the petiitoner. The petitioner ought to have stated that a request was made on behalf of the petitioner that its F.P. Nos. 23 and 307 should be given at the same place and in pursuance of the said request made by the petitioner, the respondent authorities had reconstituted F.P. Nos. 23 and 307.

31. The allegation of the petitioner is to the effect that both the final plots, namely, F.P. Nos. 23 and 307, are not having the same level as that of the roads, which are abutting the said plots. If the land is not properly levelled, the petitioner can be very well compensated in terms of money while determining the amount of compensation or the contribution which the petiitoner has to give. If the land is not levelled properly, the market value of the land is normally

reduced. In such a case, the petitioner would be either getting some amount or the market value of the land allotted to him would be considered less than the prevailing market value. In any case, the petitioner shall be compensated in terms of money. If he is not compensated and if he has any grievance with regard thereto, the petitioner can ventilate his grievance before an appropriate authority.

32. Looking to the facts stated hereinabove, it is very clear that there is no substance in the petition as no illegality has been committed by any of the respondent authorities. In the circumstances, the petition is disposed of as rejected. Rule is discharged with no order as to costs. Ad-interim relief granted earlier stands vacated.

33. Learned advocate Shri Thakker has submitted that the ex-parte ad-interim relief granted earlier be continued for some time. The said request has been objected to by the learned advocate for the respondents. Looking to the facts of the case, it is directed that the ad-interim relief should be continued for a period of four weeks from today.

(A.R. Dave, J.)

(hn)